



22/08/2023 10:48 hrs

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THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

August 22, 2023

To the Mexican Section of the USMCA Secretariat:

On May 15, 2023, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the United Steelworkers (USW), and the Mexican union Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana (“Los Mineros”) filed a petition with the United States in which it alleged a Denial of Rights to be occurring at the San Martín mine, owned by Grupo México, located in the vicinity of Sombrerete, Zacatecas, Mexico (“the Covered Facility”). The United States reviewed the situation and found a good faith basis to believe that a Denial of Rights was occurring. On June 16, 2023, the United States requested, pursuant to Article 31-A.4.2 of the United States-Mexico-Canada Agreement (USMCA), that Mexico conduct its own review of the situation.

On July 31, 2023, Mexico sent a report to the United States in which it determined no Denial of Rights to exist. Specifically, Mexico asserted that the situation at the Covered Facility was not covered by Annex 31-A of the USMCA, because: (1) the alleged Denial of Rights at the Covered Facility occurred prior to entry into force of the USMCA and did not implicate legislation that complies with Annex 23-A of the USMCA; and (2) the San Martín mine is not a “Covered Facility” within the meaning of Article 31-A.15.

The United States disagrees with Mexico’s determination¹ and continues to have a good faith basis to believe that a Denial of Rights is occurring at a “Covered Facility.” Therefore, pursuant to Article 31-A.5.1(a) of the USMCA, the United States is “requesting the establishment of a panel to request that the respondent Party allow the panel an opportunity to verify the Covered Facility’s compliance with the law in question and determine whether there has been a Denial of Rights[.]”²

¹ USMCA Article 31-A.4.5 provides: “If the respondent Party has determined that there is no Denial of Rights, the complainant Party may agree that the issue is resolved or it may communicate in writing its reasons for disagreement with the respondent Party’s determination and immediately may request a panel verification and determination pursuant to Article 31-A.5.” The United States has communicated to Mexico in writing its reasons for disagreement with Mexico’s determination. The U.S. communication is attached as Annex A to this request.

² The United States intends to provide documentary evidence in support of this request but considers the panel may benefit from verifying certain information directly, such as engaging in in-person or virtual direct testimony from individuals, including company officials of Grupo México and representatives of Los Mineros and Los Trabajadores Coaligados.

As defined in Article 31-A.2, a Denial of Rights occurs when workers at a “Covered Facility” are being denied the right of free association and collective bargaining under laws necessary to fulfill a Party’s obligations under the USMCA.

A “Covered Facility” is one that is in a sector that produces manufactured goods, supplies services, or involves mining, and that (a) produces a good or supplies a service traded between the United States and Mexico or (b) produces a good or supplies a service that competes in the territory of a Party with a good or service of the other Party. In this instance, the facility at issue mines copper and other minerals. Due to the significant bilateral trade between Mexico and the United States in copper and other minerals, the San Martín mine facility is a “Covered Facility.”

The United States considers that workers at the Covered Facility are being denied the right of free association and collective bargaining. The Covered Facility appears to be engaging in normal operations during an ongoing strike without waiting for a lawful resolution and appropriate authorization from the Mexican courts. Grupo México, the employer operating the Covered Facility, also appears to be collectively bargaining with a different labor organization not lawfully authorized to represent workers for the purposes of collective bargaining. The employer is applying the agreements negotiated with this organization to workers at the Covered Facility.³

As the USMCA expressly recognizes, the right to strike is linked to the rights to freedom of association and collective bargaining, which cannot be realized without protecting the right to strike.⁴ Mexican laws complying with Annex 23-A of the USMCA prohibit an employer from continuing regular operations at a facility where the workers are participating in an ongoing strike, and from bargaining with a labor organization that is not the proper representative of the workers. Therefore, the situation at the San Martín mine represents an ongoing denial of workers’ rights as outlined in the USMCA.⁵

The Denial of Rights described above appears to be the result of noncompliance with several provisions of Mexican law, including the following sections of the Federal Labor Law (FLL):

- Article 449, which requires that “the court and the corresponding civil authorities will enforce the right to strike, granting workers the necessary guarantees and giving them the assistance that they request in order to suspend the work.”
- Article 935, which requires that “prior to the suspension of work, the court, with a hearing of the parties, will establish the indispensable number of workers who will continue working so that the work continues to be carried out, whose suspension seriously damages the safety and conservation of the premises, machinery and raw

³ The unauthorized bargaining is occurring with a group known as Los Trabajadores Coaligados.

⁴ USMCA Article 23.3.1(a) n.6: “For greater certainty, the right to strike is linked to the right to freedom of association, which cannot be realized without protecting the right to strike.”

⁵ USMCA Article 23-A.2(a) requires Mexico, among other things, to “provide in its labor laws the right of workers to engage in concerted activities for collective bargaining or protection and to organize, form, and join the union of their choice, and prohibit, in its labor laws, employer domination or interference in union activities, discrimination, or coercion against workers for union activity or support, and refusal to bargain collectively with the duly recognized union.”

materials or the resumption of work. For this purpose, the court may order the performance of the proceedings it deems appropriate.”

- Article 133.IV, which prohibits employers or their representatives from “obligating workers by coercion or by any other means, to join or withdraw from the union or group to which they belong, or to vote for a certain candidacy, as well as any act or omission that violates their right to decide who should represent them in the collective bargaining.”
- Article 133.VII, which prohibits employers or their representatives from “taking any action that restricts the rights of the workers granted to them by the laws.”

Therefore, the United States is requesting the establishment of a panel pursuant to Article 31-A.5.1(a) of the USMCA. In accordance with Article 31-A.5.3, within three business days of the date of this request, the Secretariat shall select the panelists for this panel and transmit the request to the selected panelists.⁶

Sincerely,


Ambassador Katherine C. Tai

Annex A: U.S. Communication to Mexico Providing Its Reasons for Disagreement with Mexico’s Determination of No Denial of Rights

cc:

Raquel Buenrostro Sánchez
Secretaría de Economía
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Col. Condesa, Demarcación Territorial Cuauhtémoc
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Col. Los Alpes, Alcaldía Álvaro Obregón, Ciudad de México, D.F.
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Vidya Desai
United States Secretary
USMCA Secretariat, United States Section

⁶ USMCA Article 31-A.5.3 states: “The Secretariat shall within three business days from the date of the request for establishment of a panel select by lot one panelist from the complainant Party list, one from the respondent Party list, and one from the Joint List. The Secretariat shall immediately transmit the petition to the selected panelists.”

1401 Constitution Avenue N.W., Room 2061
Washington, D.C. 20230

U.S. Communication to Mexico Providing Its Reasons for Disagreement
with Mexico's Determination of No Denial of Rights

August 22, 2023

On June 16, 2023, the United States requested, pursuant to Article 31-A.4.2 of the United States-Mexico-Canada Agreement (USMCA), that Mexico conduct a review of an ongoing denial of rights at the mining facility known as the San Martín mine located in the vicinity of Sombrerete, Zacatecas, Mexico ("the Covered Facility"). The San Martín mine is operated by Industrial Minera México, S.A. de C.V., which in turn is owned by Southern Copper Corporation, a subsidiary of Grupo México.

On July 31, 2023, Mexico returned a report to the United States in which it determined no Denial of Rights to exist. The report said the situation at the Covered Facility was not covered by Annex 31-A of the USMCA, because: (1) the alleged Denial of Rights at the Covered Facility occurred prior to entry into force of the USMCA and did not implicate legislation that complies with Annex 23-A of the USMCA; and (2) the San Martín mine is not a "Covered Facility" within the meaning of Article 31-A.15. Pursuant to Article 31-A.4.5 of the USMCA, the United States disagrees with Mexico's determination for the following reasons.

As defined in Article 31-A.2, a Denial of Rights occurs when workers at a "Covered Facility" are being denied the right of free association and collective bargaining under laws necessary to fulfill a Party's obligations under the USMCA.

A "Covered Facility" is one that is in a sector that produces manufactured goods, supplies services, or involves mining, and that (a) produces a good or supplies a service traded between the United States and Mexico or (b) produces a good or supplies a service that competes in the territory of a Party with a good or service of the other Party. In this instance, the facility at issue mines copper and other minerals. Due to the significant bilateral trade between Mexico and the United States in copper and other minerals, the San Martín Mine is a "Covered Facility."

The United States considers that workers at the Covered Facility are being denied the right of free association and collective bargaining. The Covered Facility appears to be engaging in normal operations during an ongoing strike without waiting for a lawful resolution and appropriate authorization from the Mexican courts. Grupo México, the employer operating the Covered Facility, also appears to be collectively bargaining with a different labor organization not lawfully authorized to represent workers for the purposes of collective bargaining. The employer is applying the agreements negotiated with this organization to workers at the Covered Facility.¹

As the USMCA expressly recognizes, the right to strike is linked to the rights to freedom of association and collective bargaining, which cannot be realized without protecting the right to

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strike.² Mexican laws complying with Annex 23-A of the USMCA prohibit an employer from continuing regular operations at a facility where the workers are participating in an ongoing strike, and from bargaining with a labor organization that is not the proper representative of the workers. Therefore, the situation at the Covered Facility represents an ongoing denial of workers' rights as outlined in the USMCA.³

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